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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 JOSEPH B.,

10 Plaintiff,

Case No. C18-5935JLR

11 v.

ORDER AFFIRMING DENIAL OF
BENEFITS

12 COMMISSIONER OF SOCIAL
SECURITY,

13 Defendant.

14 **I. INTRODUCTION**

15 Plaintiff Joseph B. seeks review of the denial of his applications for supplemental
16 security income and disability insurance benefits. Plaintiff contends that the
17 Administrative Law Judge (“ALJ”) erred by failing to find that Plaintiff suffered a severe
18 impairment of panic disorder at step two of the disability evaluation process, and by
19 failing to properly evaluate Plaintiff’s testimony regarding the side effects of his
20 medications and the functional impact of his headaches. (Pl. Op. Br. (Dkt. # 11) at 1-2.)
21 Plaintiff also argues that the Appeals Council erred in evaluating a letter from Plaintiff’s
22 wife submitted after the ALJ’s decision, which related to Plaintiff’s headache symptoms.
23 (*Id.* at 11-12.) As discussed below, the court AFFIRMS the Commissioner’s decision

1 and DISMISSES this case with prejudice.

2 II. THE ALJ'S DECISION

3 Utilizing the five-step disability evaluation process, 20 C.F.R. §§ 404.1520,
4 416.920, the ALJ found:

5 **Step one:** Plaintiff has not engaged in substantial gainful activity since September
6 22, 2014, the alleged onset date. *See* 20 C.F.R §§ 404.1571-76, 416.971-76.

7 **Step two:** Plaintiff has the following severe impairments: Obesity, tinnitus,
8 chronic back pain with no objective findings, mild osteoarthritis, migraine and
9 other headaches, depression not otherwise specified, and anxiety disorder. *See* 20
C.F.R. §§ 404.1520(c), 416.920(c).

10 **Step three:** Plaintiff does not have an impairment or combination of impairments
11 that meets or medically equals the severity of one of the listed impairments in 20
C.F.R. Part 404, Subpart P, Appendix 1. *See* 20 C.F.R. §§ 404.1520(d), 404.1525,
404.1526, 416.920(d), 416.925, 416.926.

12 **Residual Functional Capacity ("RFC"):** Plaintiff can perform light work as
13 defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b). He can lift 20 pounds
14 occasionally and 10 pounds frequently. He can sit, stand, and walk each for six
15 hours in an eight-hour workday. He can occasionally climb ladders, ropes,
16 scaffolds, ramps, and stairs. He can occasionally stoop, crouch, crawl, and kneel.
17 He can have no exposure to extreme cold, and occasional exposure to noise,
inhaled irritants, and hazards. He can understand, remember, and apply
information to complete simple and detailed tasks in a setting with few changes,
no public contact, and no teamwork assignments.

18 **Step four:** Plaintiff cannot perform past relevant work. *See* 20 C.F.R.
19 §§ 404.1565, 416.965.

20 **Step five:** Considering Plaintiff's age, education, work experience, and RFC,
21 there are jobs that exist in significant numbers in the national economy that
Plaintiff can perform. *See* 20 C.F.R. §§ 404.1569, 404.1569(a), 416.969,
416.969(a).

22 (Admin. Record ("AR") (Dkt. # 7) at 18-31.) Based on these findings, the ALJ found
23 that Plaintiff had not been under a disability, as defined by the Social Security Act

1 (“Act”), from September 22, 2014, through the date of the ALJ’s decision. (*Id.* at 30-31.)
2 The Appeals Council considered additional evidence Plaintiff submitted after the ALJ’s
3 decision, including medical records from the VA Medical Center, and a letter from
4 Plaintiff’s wife. (*See id.* at 2.) The Appeals Council determined that this evidence “d[id]
5 not show a reasonable probability that it would change the outcome of the [disability]
6 decision,” and denied Plaintiff’s request for review. (*See id.* at 1-4.)

7 8 **III. DISCUSSION**

9 Plaintiff bears the burden of proving he is disabled within the meaning of the Act.
10 *See Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). Pursuant to 42 U.S.C.
11 § 405(g), the court may only set aside a denial of social security benefits when the ALJ’s
12 findings are based on legal error or not supported by substantial evidence in the record as
13 a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005). The ALJ is
14 responsible for determining credibility, resolving conflicts in medical testimony, and
15 resolving any other ambiguities that exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
16 Cir. 1995). Although the court is required to examine the entire record, it may neither
17 reweigh the evidence nor substitute its judgment for that of the ALJ. *See Thomas v.*
18 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

19 **A. The ALJ Did Not Harmfully Err in Finding that Plaintiff’s Panic Disorder** 20 **Was Not a Severe Impairment**

21 Plaintiff argues that the ALJ erred at step two in finding that Plaintiff did not have
22 a severe impairment of panic disorder. (Pl. Op. Br. at 4-9.) The court disagrees.

23 At step two, the ALJ found that Plaintiff had severe mental impairments of

1 “depression not otherwise specified” and “anxiety disorder.” (AR at 21.) The ALJ noted
2 that Plaintiff “exhibited a constellation of symptoms that has resulted in varying
3 diagnoses for his mental health conditions, depending on his presentation during different
4 examinations.” (*Id.*) The ALJ explained, accordingly, that he “considered all mental
5 health symptoms regardless of the precise diagnosis” in analyzing Plaintiff’s claims. (*Id.*)

6 The step two inquiry is “merely a threshold determination meant to screen out
7 weak claims.” *Buck v. Berryhill*, 869 F.3d 1040, 1048 (9th Cir. 2017) (citing *Bowen v.*
8 *Yuckert*, 482 U.S. 137, 146-47 (1987)). At step two, the ALJ must determine if the
9 claimant suffers from any impairments that are “severe.” 20 C.F.R. §§ 404.1520(c),
10 416.920(c). As long as the claimant has at least one severe impairment, the disability
11 inquiry moves on to step three. *See* 20 C.F.R. §§ 404.1520(d), 416.920(d). The step two
12 inquiry “is not meant to identify the impairments that should be taken into account when
13 determining the RFC.” *Buck*, 869 F.3d at 1048-49. At the RFC phase, the ALJ must
14 consider the claimant’s limitations from all impairments, including those that are not
15 severe. *Id.* at 1049. “The RFC therefore should be exactly the same regardless of
16 whether certain impairments are considered ‘severe’ or not.” *Id.* (emphasis omitted).
17 Thus, a claimant generally cannot be prejudiced by failure to consider a particular
18 impairment severe at step two as long as the ALJ finds that the claimant has at least one
19 severe impairment, and still addresses the non-severe impairment when considering the
20 claimant’s RFC. *Id.* (citing *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)).

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23 Plaintiff has failed to show harmful error. *See Ludwig v. Astrue*, 681 F.3d 1047,

1 1054 (9th Cir. 2012) (holding that the party challenging an administrative decision bears
2 the burden of proving harmful error) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407-09
3 (2009)). In discussing Plaintiff's RFC, the ALJ addressed panic attacks, the primary
4 manifestation of Plaintiff's alleged panic disorder. (AR at 25.) The ALJ noted that the
5 record did not support the frequency of attacks to which Plaintiff testified. (*Id.*) The ALJ
6 noted that Plaintiff was prescribed medication, "which seemed to help manage his
7 symptoms." (*Id.*) The ALJ interpreted this evidence to find that Plaintiff's panic attacks
8 could be accommodated by the limitations in the RFC, including few workplace changes,
9 no public contact, and no teamwork assignments. (*See id.* at 23, 25.) This was a
10 reasonable interpretation of the evidence, and Plaintiff has thus not shown error. *See*
11 *Thomas*, 278 F.3d at 954.

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13 Plaintiff argues that *Hill v. Astrue*, 698 F.3d 1153, 1161 (9th Cir. 2012),
14 commands reversal. (Pl. Op. Br. at 6-7.) The Ninth Circuit in *Hill* found that the ALJ
15 erred because he excluded panic disorder from the claimant's list of impairments, making
16 the RFC incomplete. *Id.* But here, the ALJ explicitly addressed Plaintiff's panic attacks
17 in discussing the RFC regardless of the fact that he did not list panic disorder as a severe
18 impairment. (AR at 25.) *Hill* therefore does not control the outcome, and Plaintiff has
19 failed to show that the ALJ harmfully erred in failing to find panic disorder to be a severe
20 impairment at step two.

21 **B. The ALJ Did Not Harmfully Err in Rejecting Plaintiff's Symptom Testimony**

22 Plaintiff argues that the ALJ erred in rejecting two specific points from Plaintiff's
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1 testimony. (Pl. Op. Br. at 9-12.) First, Plaintiff argues that the ALJ erred in rejecting
2 Plaintiff's testimony about the side effects of his medications. (*Id.* at 9-11.) Second,
3 Plaintiff argues that the ALJ erred in rejecting Plaintiff's testimony about the functional
4 impact of his headaches. (*Id.* at 11-12.)

5 The Ninth Circuit has "established a two-step analysis for determining the extent
6 to which a claimant's symptom testimony must be credited." *Trevizo v. Berryhill*, 871
7 F.3d 664, 678 (9th Cir. 2017). The ALJ must first determine whether the claimant has
8 presented objective medical evidence of an impairment that "could reasonably be
9 expected to produce the pain or other symptoms alleged." *Id.* (quoting *Garrison v.*
10 *Colvin*, 759 F.3d 995, 1014-15 (9th Cir. 2014)). At this stage, the claimant need only
11 show that the impairment could have caused some degree of his symptoms; he does not
12 have to show that the impairment could reasonably be expected to cause the severity of
13 the symptoms alleged. *Id.* The ALJ found that Plaintiff met this step. (AR at 24.)

15 If the claimant satisfies the first step, and there is no evidence of malingering, the
16 ALJ may only reject the claimant's testimony "by offering specific, clear and convincing
17 reasons for doing so. This is not an easy requirement to meet." *Trevizo*, 871 F.3d at 678
18 (quoting *Garrison*, 759 F.3d at 1014-15). In evaluating the ALJ's determination at this
19 step, the court may not substitute its judgment for that of the ALJ. *Fair v. Bowen*, 885
20 F.2d 597, 604 (9th Cir. 1989). As long as the ALJ's decision is supported by substantial
21 evidence, it should stand, even if some of the ALJ's reasons for discrediting a claimant's
22 testimony fail. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

1 1. The ALJ Did Not Harmfully Err in Rejecting Plaintiff's Testimony
2 Regarding the Side Effects of His Medications

3 Plaintiff argues that the ALJ accepted Plaintiff's testimony regarding the side
4 effects of his medications, but failed to account for the functional impact of these side
5 effects in crafting the RFC. (Pl. Op. Br. at 9-10.) Plaintiff testified that his medications
6 caused sexual dysfunction, sleepiness, and drowsiness. (AR at 120, 365.) Plaintiff
7 argues that these side effects could cause Plaintiff to be off-task or absent from work.
8 (Pl. Op. Br. at 10.)

9 Plaintiff's argument fails. First, Plaintiff overstates the ALJ's position. The ALJ
10 did not accept Plaintiff's testimony that he experienced drowsiness from his medications,
11 but merely explained that Plaintiff testified to that effect. (*See* AR at 24.)

12 Second, the ALJ gave clear and convincing reasons for discounting Plaintiff's
13 testimony regarding the functional effect of his medications. "Contradiction with the
14 medical record is a sufficient basis for rejecting the claimant's subjective testimony."
15 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (citing
16 *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)). The ALJ noted that Plaintiff's
17 medical records showed normal memory, concentration, attention, and overall cognition.
18 (AR at 25, 600, 701, 759, 768, 789, 833-34.) The ALJ reasonably interpreted the
19 evidence in finding that Plaintiff's normal cognitive function contradicted his claims that
20 his drowsiness impacted his ability to work.¹ *See Thomas*, 278 F.3d at 960.

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23 ¹ The ALJ noted several other reasons for discounting Plaintiff's testimony, including his
performance of strenuous household chores and brief work as a ski instructor. (*See* AR at 26-27,

1 Third, Plaintiff has failed to show that the ALJ irrationally interpreted the
2 evidence in crafting the RFC. “[T]he ALJ is responsible for translating and incorporating
3 clinical findings into a succinct RFC.” *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d
4 996, 1006 (9th Cir. 2015) (citing *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th
5 Cir. 2008)). Plaintiff alleged drowsiness, but the record does not conclusively establish
6 what functional effect drowsiness would have on Plaintiff’s ability to work. (*See*
7 *generally* AR.) The ALJ interpreted the overall medical evidence and determined that,
8 functionally, Plaintiff could “understand, remember, and apply information to complete
9 both simple and detailed tasks in a setting with few changes, no public contact, and no
10 teamwork assignments.” (*Id.* at 23.) Drowsiness does not *per se* cause a person to be
11 off-task or miss work. Thus, it was up to the ALJ to determine, based on the totality of
12 the evidence, what functional limitations Plaintiff had based on the side effects of his
13 medications. *See Rounds*, 807 F.3d at 1006. Plaintiff has failed to show that the ALJ
14 unreasonably interpreted the evidence when doing so, and has consequently failed to
15 show harmful error. *See Ludwig*, 681 F.3d at 1054 (citing *Shinseki*, 556 U.S. at 407-09).

17 2. The ALJ Did Not Harmfully Err in Rejecting Plaintiff’s Testimony
18 Regarding the Effect of His Headaches

19 Plaintiff argues that the ALJ failed to adequately account in the RFC for the effect
20 his headaches have on his ability to work. (*See* Pl. Op. Br. at 11-12.) Plaintiff argues
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23 327, 373-74, 440, 524, 705, 767.) Because the ALJ reasonably rejected Plaintiff’s testimony
based on contradiction with the medical evidence, the court need not address whether these
reasons justify the ALJ’s rejection of Plaintiff’s testimony on the side effects of his medications.

1 that the ALJ failed to fully account for his testimony that he suffered severe headaches at
2 least once a month in the RFC. (*Id.*)

3 Plaintiff reported experiencing headaches about one to two times per week. (*See*
4 AR at 26, 131-32, 670-75.) The ALJ noted that most of Plaintiff's headaches were
5 reported as moderate, with more significant migraines occurring about once a month.
6 (*See id.* at 26, 670-75.) The ALJ further noted that Plaintiff was never referred for a
7 neurological consultation to manage his headaches, and he used only over-the-counter
8 medication to manage them. (*Id.* at 26, 132.) The ALJ therefore determined that any
9 functional limitations caused by Plaintiff's headaches could be accommodated by
10 limiting his exposure to irritants and reducing his stress. (*Id.*)

12 Plaintiff has again failed to show harmful error. *See Ludwig*, 681 F.3d at 1054
13 (citing *Shinseki*, 556 U.S. at 407-09). As discussed above, the ALJ is responsible for
14 translating the evidence into a succinct RFC. *Rounds*, 807 F.3d at 1006 (citing
15 *Stubbs-Danielson*, 539 F.3d at 1174). The ALJ did so here, finding that Plaintiff's
16 headaches, as established by the evidence, could be accommodated in a work setting by
17 reducing headache triggers such as exposure to irritants and stress. (*See AR* at 23, 26.)
18 Plaintiff's testimony does not conclusively establish functional limitations due to his
19 headaches, such as being off-task a certain amount of time in a day or missing a
20 particular number of days of work in a month. (*See id.* at 131-32, 670-75.) Plaintiff has
21 failed to show that the ALJ irrationally interpreted the evidence in crafting the RFC, and
22 has consequently failed to show harmful error. *See Thomas*, 278 F.3d at 954.
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1 **C. The Appeals Council Did Not Harmfully Err in Evaluating a Letter from**
2 **Plaintiff's Wife Submitted After the ALJ's Decision**

3 In connection with Plaintiff's argument that the ALJ erroneously evaluated his
4 testimony regarding the functional effect his headaches, Plaintiff argues that the Appeals
5 Council erred in evaluating a letter from Plaintiff's wife describing his headache
6 symptoms. (Pl. Op. Br. at 11-12.) The court disagrees.

7 The parties first dispute whether the Appeals Council actually considered this
8 letter. This dispute stems from contradictory language in the Appeals Council's decision.
9 The Appeals Council acknowledged that Plaintiff submitted additional evidence after the
10 ALJ's decision, including a letter from Plaintiff's wife, but found that "this evidence does
11 not show a reasonable probability that it would change the outcome of the [ALJ's]
12 decision." (AR at 2.) However, the Appeals Council then stated that it "did not consider
13 and exhibit this evidence." (*Id.*) Ultimately, the court need not resolve this contradiction
14 because the evidence was included in the administrative record, and the court may
15 therefore consider it in determining whether the ALJ's decision was supported by
16 substantial evidence. *See Revels v. Berryhill*, 874 F.3d 648, 665 (9th Cir. 2017) (citing
17 *Brewes v. Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1163 (9th Cir. 2012)).

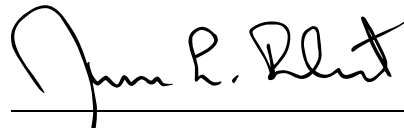
18 Plaintiff has again failed to show harmful error. Plaintiff's wife did not describe
19 any limitations beyond those Plaintiff described in his testimony. (*Compare* AR at 8 *with*
20 *id.* at 131-32.) As discussed above, the ALJ reasonably analyzed Plaintiff's testimony
21 regarding the functional effect of his headaches and adequately accounted for it in the
22 RFC. *See supra* Part III.B.2. An ALJ generally does not harmfully err by failing to
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1 address lay witness testimony when the ALJ adequately addresses the claimant's
2 testimony and the lay witness testimony does not describe limitations beyond those the
3 claimant has described. *See Molina*, 674 F.3d at 1122 (holding that the ALJ did not
4 harmfully err in failing to discuss lay witness testimony when that testimony "did not
5 describe any limitations beyond those [the plaintiff] herself described"). That is what
6 occurred here, and Plaintiff has thus failed to show harmful error with respect to
7 Plaintiff's wife's letter. *See id.*

8 9 **IV. CONCLUSION**

10 For the foregoing reasons, the court AFFIRMS the Commissioner's final decision
11 and DISMISSES this case with prejudice.

12 DATED this 15th day of July, 2019.

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15 JAMES L. ROBART
16 United States District Judge
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